

**UNPUBLISHED**

**UNITED STATES COURT OF APPEALS**

**FOR THE FOURTH CIRCUIT**

UNITED STATES OF AMERICA,  
Plaintiff-Appellee.

v.

No. 98-4330

JOHN MARK BERRILL,  
Defendant-Appellant.

UNITED STATES OF AMERICA,  
Plaintiff-Appellee.

v.

No. 98-4444

JOHN MARK BERRILL,  
Defendant-Appellant.

UNITED STATES OF AMERICA,  
Plaintiff-Appellee.

v.

No. 98-6865

JOHN MARK BERRILL,  
Defendant-Appellant.

Appeals from the United States District Court  
for the Eastern District of Virginia, at Norfolk.  
Henry C. Morgan, District Judge.  
(CR-97-58, CA-98-515-2)

Submitted: March 31, 1999

Decided: May 20, 1999

Before WILKINS and TRAXLER, Circuit Judges, and  
HALL, Senior Circuit Judge.

Affirmed in part and dismissed in part by unpublished per curiam opinion.

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## **COUNSEL**

Jennifer Elyce Tope Stanton, Norfolk, Virginia, for Appellant; John Mark Berrill, Appellant Pro Se. Helen F. Fahey, United States Attorney, Janet S. Reincke, Assistant United States Attorney, Norfolk, Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

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## **OPINION**

### **PER CURIAM:**

John Berrill appeals in these consolidated cases from several district court orders. In appeal number 98-4330, Berrill appeals the district court's order denying his request for an extension of time to appeal the district court's judgment order finding him guilty of conspiring to possess with intent to distribute and distribution of cocaine, in violation of 21 U.S.C. § 846 (1994). In appeal number 98-4444, Berrill challenges the district court's order refusing to alter his sentence so as to permit his federal sentence to run concurrently with certain state sentences imposed subsequent to his federal sentence. Finally, in appeal number 98-6865, Berrill appeals the district court's order denying his motion for habeas relief under 28 U.S.C.A. § 2255 (West 1994 & Supp. 1998).

In the first two appeals, counsel for Berrill has filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), addressing whether the district court properly denied Berrill's requests for an extension of time and alteration of his sentence, but conceding that in light of Berrill's valid waiver of his right to appeal, there are no meritorious

grounds for appeal. Berrill has filed a supplemental brief in support of the appeals addressed by counsel, and also appeals, pro se, from the district court's order denying habeas relief.

Federal Rule of Appellate Procedure 4(b)(1)(A)(i) requires that a notice of appeal in a criminal case be filed within ten days of the entry of judgment. Rule 4(b)(4) permits the district court, upon a showing of excusable neglect or good cause, to extend the appeal period up to thirty days. Regardless of the reasons given for an extension, however, the district court lacks authority to grant an extension to appeal more than forty days after the entry of judgment. See United States v. Tarant, 158 F.3d 946, 947 (6th Cir. 1998). The district court entered judgment in this case on October 14, 1997. Berrill did not request an extension until February 17, 1998, several months after the time for seeking an extension had expired. Accordingly, the district court properly found that it lacked authority to grant an extension. We therefore affirm the district court order appealed in case number 98-4330.

Next, we affirm the district court order appealed in case number 98-4444. The district court properly found that none of the circumstances required by Rule 35 of the Federal Rules of Criminal Procedure for the alteration of a sentence are present in this case. Hence, the district court was not authorized to alter Berrill's sentence. As for appeal number 98-6865, we have reviewed the district court's opinion and find no reversible error. Accordingly, we deny a certificate of appealability, deny Berrill's motion for appointment of counsel, and dismiss the appeal on the reasoning of the district court. See United States v. Berrill, Nos. CR-97-58; CA-98-515-2 (E.D. Va., May 29, 1998).

In accordance with the requirements of Anders, we have examined the entire record and find no meritorious issues for appeal. This court requires that counsel inform their clients, in writing, of their right to petition the Supreme Court of the United States for further review. If a client requests that a petition be filed, but counsel believes that such a petition would be frivolous, then counsel may move in this court for leave to withdraw from representation. Counsel's motion must state that a copy thereof was served on the client.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

Nos. 98-4330/4444 - AFFIRMED

No. 98-6865 - DISMISSED